

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

**MARATHON ASHLAND PETROLEUM,  
LLC,**

**Plaintiff,**

**v.**

**SELKER BROS., INC.,**

**Defendant,**

**Case No. 3:04CV7638**

**ORDER VACATING CERTAIN  
PORTIONS OF JULY 6, 2006  
ORDERS AND CLARIFYING  
RULING TO STAY, WITHOUT  
PREJUDICE, FOURTH-PARTY  
DEFENDANTS' MOTION TO  
COMPEL ARBITRATION  
AND/OR MEDIATION**

Fourth-Party Defendants, Kinder Morgan Transmix Company, LLC and Kinder Morgan Operating LP "A," ("Kinder Morgan") have moved this Court (Docket No. 95), for a stay of the proceedings on the Fourth-Party Complaint and to vacate and clarify those portions of the July 6, 2006 Orders denying Fourth-Party Defendants' previously filed Motion to Compel Arbitration and/or Mediation. This Court has granted the Motion (Docket No. 96).

Further, with respect to the sections of this Court's Memorandum Opinion of July 6, 2006 (Docket No. 92, at pp. 4-5) and the July 6, 2006 Judgment Entry (Docket No. 93), addressing Kinder Morgan's Motion to Compel Arbitration and/or Mediation under the Federal Arbitration Act, this Court HEREBY VACATES that portion of the July 6, 2006 Memorandum Opinion that states: "The Court . . . will deny Kinder's motion directed at such an order [to compel arbitration

and/or mediation]." That portion of the July 6, 2006 Judgment Entry which denies the motion to compel arbitration and/or mediation also IS HEREBY VACATED.

Finally, Kinder Morgan's previously filed Motion to Compel Arbitration and/or Mediation (Docket # 58 and # 74), IS HEREBY STAYED, WITHOUT PREJUDICE, such that Kinder Morgan may pursue its request, under the Federal Arbitration Act, for compliance with the parties' obligations to participate in alternative dispute resolution, whether it be arbitration or mediation, as set forth in paragraph 12 of the Agreement between Duke and Kinder Morgan, at the appropriate time following resolution of the underlying claims brought by defendant Selker Bros., Inc. against plaintiff MAP.

IT IS SO ORDERED.

*s/ David A. Katz*

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DAVID A. KATZ  
U.S. DISTRICT JUDGE